



**Written Testimony of Debra Ness  
for the COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS  
SUBCOMMITTEE ON CHILDREN AND FAMILIES**

**Writing the Next Chapter of the Family and Medical Leave Act –  
Building on a Fifteen Year History of Support for Workers**

**Wednesday, February 13, 2008 - 3:00 p.m.  
430 Dirksen Senate Office Building  
February 13, 2008**

Good afternoon. I am President of the National Partnership for Women & Families. The National Partnership is a non-profit, non-partisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care, and policies that help workers in the United States meet the dual responsibilities of work and family.

The National Partnership for Women & Families leads a broad, diverse coalition of more than 200 groups dedicated to defending and expanding the Family and Medical Leave Act (FMLA) on behalf of workers in the United States. The coalition reaches across a wide spectrum of concerned citizens, including religious, women's, seniors, veterans, and disability groups.

Our leadership of this coalition is a natural extension of our original role as drafter of the FMLA and leader of the coalition of more than 200 organizations advocating for its passage.

I am especially pleased to be here today because this month marks the 15<sup>th</sup> anniversary of the FMLA. Its passage was a watershed moment for government support of working families in the United States. The law guarantees eligible workers up to twelve weeks of leave each year to care for immediate family members or to address serious personal health concerns. By making job-protected leave available to all eligible workers, and requiring that health insurance continue through the leave, the law has enabled both women and men to meet their responsibilities for their families without sacrificing their jobs and long-term economic stability. The law also helps combat gender discrimination and pernicious stereotypes about gender roles – because both male and female workers can take FMLA leave, the law helps to ensure that women are not penalized or unfairly denied job opportunities simply because of assumptions about their family care giving responsibilities. It also helps ensure that men have the time to care for children and other families members, and take on more responsibilities at home.

To celebrate this anniversary, the National Partnership for Women & Families launched a new website, [www.thanksfmla.org](http://www.thanksfmla.org), for workers to learn about the FMLA and to share their stories

about how the law has helped in their lives. Although the website just went up, we are already receiving many stories and I will be sharing some of those with you today.

Many of us in the room today were instrumental in the long fight to pass the FMLA. We braved an unrelenting stream of attacks from businesses that claimed the law would be the end of them. Fifteen years later, the law is well established, and businesses have flourished. It is important to remember that lesson when we talk about expanding the FMLA and creating a way to include wage replacement while workers are on leave—we will undoubtedly hear that the same scare tactics again and predictions that the sky will fall. It did not fall when we passed the FMLA, and it will not fall if we make this basic family support available and accessible to more workers. In fact, as we explain in more detail below, the strongest economies in the world are in countries that provide paid family leave to all workers. The FMLA is good for families, and it is good for business. Expanding it will make it even more so.

It is an exceptionally sweet anniversary for supporters of the FMLA because this year also marks the first time the law has been expanded since its inception. Now under the FMLA, military families will be able to take up to 26 weeks of leave to help care for their soldiers injured in combat. These families have sacrificed so much for their country, and we are thrilled that expansion of the FMLA will help them access a necessary support, leave to care for a wounded soldier. Additionally, military family members will be able to use FMLA leave to help them cope with the deployment of a close relative.

While the anniversary and expansion of the FMLA are cause for celebration, we are also very concerned for the vitality of the law given that the Department of Labor is proposing new FMLA regulations. As my testimony will make clear, the FMLA is working and working well. It does not need any significant regulatory changes. Rather, we should be looking at how we can expand it so more workers can realize its promise of job-protected leave in times of need.

### **The FMLA is Working Well**

Since 1993, workers have used the FMLA more than 100 million times to take the unpaid time off that they need to care for themselves or their families.<sup>1</sup> This includes employees from all walks of life. For example, 75 percent of leave takers earn less than \$75,000 a year.<sup>2</sup> A significant number of leave takers are men (42 percent)<sup>3</sup> who use the FMLA for both their own

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<sup>1</sup> The Family and Medical Leave Act Regulations: A Report on the Department of Labor's Request for Information 2007 Update (U.S. Department of Labor June 2007) (hereinafter "DOL 2007 Report") at 129. We based this estimate on multiplying the Employer Survey Based Estimate by 15.

Unfortunately, the data we have on FMLA leave use is quickly becoming out of date. The Department of Labor last surveyed employers and employees on the FMLA in 2000. Since then, the Department has not conducted any national survey on the FMLA. In its most recent Request for Information and Report, the Department appeared to question the data from its 2000 Report, although it did not offer substitute data, nor has it attempted any national survey of its own. The Department needs to conduct scientifically sound survey research on the FMLA so that policy decisions can be made based on that information, rather than on selected employers' complaints.

<sup>2</sup> David Cantor et al, *Balancing the Needs of Families and Employers: Family and Medical Leave Surveys 2000 Update*, conducted by Westat for the U.S. Department of Labor, Washington, DC, 2000 (hereinafter "DOL 2000 Report") at 3-7.

<sup>3</sup> *Id.*

serious illness (58 percent) and to care for seriously ill family members (42 percent).<sup>4</sup> When taken, leave is usually quite short: the median length is just 10 days.<sup>5</sup>

Workers overwhelmingly support the FMLA. In 2006, DOL issued a Request for Information about the FMLA and received thousands of comments from individual workers concerning how incredibly important the FMLA is in their lives. Indeed, DOL observed that it could have “written an entire report” based solely on the individual stories supplied by workers.<sup>6</sup> Some of the stories included by DOL in its report illustrate why the FMLA is so important:

As a cancer survivor myself, I cannot imagine how much more difficult those days of treatments and frequent doctor appointments would’ve been without FMLA. I did my best to be at work as much as possible, but chemotherapy and radiation not only sap the body of energy, but also take hours every day and every week in treatment rooms.”<sup>7</sup>

FMLA has tremendously helped my family. I have a child born w/[asthma], allergies & other medical issues. And, there are times I’m out of work for days[. I]f I didn’t have FMLA I would have been fired [a long] time ago. I’ve been able to maintain my employment and keep my household from having to need assistance from the commonwealth.”<sup>8</sup>

Thanks to the FMLA, I was able to take three months off work with full salary in order to take care of [my husband] when he was reduced to a state of complete dependency. . . . I was secure in the knowledge that I could come right back to my job, and I developed a keen sense of loyalty to my employer which has more than once prevented me from looking for work elsewhere.”<sup>9</sup>

The FMLA has also been accepted and welcomed by employers. Data from the most recent national research on it, conducted by the U.S. Department of Labor, show that the vast majority of employers in this country report that complying with the FMLA has a positive/neutral effect on productivity (83 percent), profitability (90 percent), growth (90 percent), and employee morale (90 percent).<sup>10</sup> The Act benefits employers in numerous ways, most notably the savings derived from retaining trained employees, from productive workers on the job, and from a positive work environment.

The Department of Labor agrees that the FMLA is working well. According to its 2007 Report:

Department is pleased to observe that, in the vast majority of cases, the FMLA is working as intended. For example, the FMLA has succeeded in allowing working parents to take leave for the birth or adoption of a child, and in allowing employees to care for family members with serious health conditions. The FMLA also appears to work well when

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<sup>4</sup> *Id.* at 4-17.

<sup>5</sup> *Id.* at 2-4.

<sup>6</sup> DOL 2007 Report at iv.

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> DOL 2000 Report at 7-5 and A-2-68 Table A2-7.5

employees require block or foreseeable intermittent leave because of their own truly serious health condition. Absent the protections of the FMLA, many of these workers might not otherwise be permitted to be absent from their jobs when they need to be.<sup>11</sup>

The Department devoted a great deal of its 2007 report to the use of intermittent unscheduled leave and the problems employers claim to have with this part of the FMLA, and we fully expect that this will be an issue in the Department's proposed regulatory changes. But because it has not surveyed employers or employees on this issue since 2000, the Department's analysis was based heavily on anecdotes and self-reporting from employers regarding the use of unscheduled intermittent leave. The data, however, shows that unscheduled intermittent leave is a very small part of the leave taken under the FMLA and that the vast majority of FMLA covered establishments do not have any problem with unscheduled intermittent leave. From DOL's 2000 survey of employers we know that "81 to 94 percent of covered establishments that report that intermittent FMLA leave did not adversely impact either their productivity or profits, or may have had some positive effect."<sup>12</sup>

Intermittent leave is critically important to certain employees because of the health conditions they or their family members face. Just last week, the National Partnership received the following story regarding FMLA use from a woman in Illinois:

I have benefited from FMLA, because my father is suffering with prostate cancer and my mom has type 2 diabetes and severe arthritis. I took intermittent FMLA to help my parents through this rough stage in their lives. My dad is 83 years old, and does not wish to go to a nursing home, he has good days and bad days. I am the only child of my parents, and they depend on me for everything. I don't know what I would do without FMLA benefit. I hope they will not take it away.<sup>13</sup>

### **Paid Family and Medical Leave**

Politicians and lawmakers often speak passionately about building a nation that values families, and the FMLA was a monumental step toward this goal. But it was only a first step. Millions of Americans cannot afford to take advantage of the protections it affords. We strongly support expanding the FMLA to make it more accessible and to all working families and to make paid family and medical leave an option for working families that simply cannot afford to take the unpaid leave the FMLA provides.

Without some form of wage replacement, the FMLA's promise of job-protected leave is a chimera for too many women and men. In fact, 78% of employees who have needed but not taken family or medical leave say they could not afford to take the leave.<sup>14</sup> More than one-third

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<sup>11</sup> DOL 2007 Report at v.

<sup>12</sup> *Id.* at 159.

<sup>13</sup> Email Received by the National Partnership for Women & Families, [www.thanksfmla.org](http://www.thanksfmla.org), on February 6, 2008.

<sup>14</sup> DOL 2000 Report at 2-16.

(34%) of the men and women who take FMLA receive no pay during leave, and another large share of the population have a very limited amount of paid leave available to them.<sup>15</sup>

Last week we received a story from a woman in Colorado that illustrates how devastating the lack of wages while on leave can be:

I needed to take FMLA when I was pregnant. My job didn't offer paid leave when I gave birth to my daughter. Because of FMLA I was guaranteed time off when I was put on bed rest. Because it was unpaid I had to work from my bed and go back to work before my daughter was ready for me to go back. Financially I needed to go back to work. My daughter was 4 weeks old and on oxygen. I had to make special arrangements for a family friend to watch her instead of the childcare facility because of her age and special needs.<sup>16</sup>

When a personal or family medical crisis strikes, workers frequently have no choice but to take unpaid leave or leave their jobs. As a result, for many workers, the birth of a child or an illness in the family forces them into a cycle of economic distress. Three hundred thousand bankruptcies a year are caused by lack of paid medical leave, according to research by Harvard professor Elizabeth Warren.<sup>17</sup> Twenty-five percent of all poverty spells begin with the birth of a child, according to The David and Lucile Packard Foundation.<sup>18</sup>

The lack of paid family and medical leave hits low-income workers hardest: almost three in four low-income employees who take family and medical leave receive no pay, compared to between one in three and one in four middle-and upper-income employees.<sup>19</sup> In addition, low-income workers, as well as their children and family members, are more likely to be in poor health in large part because many lack health insurance and are not eligible for coverage under Medicaid and SCHIP.<sup>20</sup>

Providing paid family and medical leave for workers to perform essential caretaking responsibilities for newborns and newly-adopted children. Parents who are financially able to take leave are able to give new babies the critical care they need in the early weeks of life, laying a strong foundation for later development. Paid family and medical leave may even reduce health care costs: studies have shown that when parents are able to be involved in their children's health care, children recover faster.<sup>21</sup>

Paid family and medical leave will also help the exponentially growing number of workers who are caring for older family members. Thirty-five percent of workers, both women and men,

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<sup>15</sup> *Id.* at 4-5—4-6.

<sup>16</sup> Email Received by the National Partnership for Women & Families, [www.thanksfmfla.org](http://www.thanksfmfla.org), on February 5, 2008.

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<sup>18</sup> The David and Lucile Packard Foundation. 2001. *The Future of Children: Caring for Infants and Toddlers*. Richard Behrman, ed. Los Altos, California: The David and Lucile Packard Foundation. 11(1).

<sup>19</sup> DOL 2000 Report at 4-5 and A-2-31 Table A2-4.1.

<sup>20</sup> Kaiser Family Foundation. 2007. *The Uninsured: A Primer. Key Facts About Americans Without Health Insurance*. <http://www.kff.org/uninsured/upload/7451-03.pdf>.

<sup>21</sup> Palmer S.J., Care of sick children by parents: A meaningful role. *J Adv Nurs*. 18:185, 1993.

report they have cared for an older relative in the past year.<sup>22</sup> Roughly half of Americans 65 years of age and older participate in the labor force. Many require time away from work to care for their own health or the health of a family member.<sup>23</sup>

A national paid family and medical leave program will help businesses. Studies show that the costs of losing an employee (advertising for, interviewing and training a replacement) is often far greater than the cost of providing short-term leave to retain existing employees. The average cost of turnover is 25 percent of an employee's total compensation.<sup>24</sup> When businesses take care of their workers, they are better able to retain them, and when workers have the security of paid family leave, they experience increased commitment, productivity, and morale, and their employers reap the benefits of lower turnover and training costs. Finally, paid family and medical leave helps small business owners because it allows them to offer a benefit that they could not afford to provide on their own. This will help level the playing field with larger businesses, making it easier for small businesses to compete for the best workers.

As described below, only a handful of states offer paid family and medical leave programs for workers in their states. At the federal level, Senators Christopher Dodd and Ted Stevens have introduced the first-ever bipartisan bill that would provide wage replacement for workers on family and medical leave. The Family Leave Insurance Act would provide up to eight weeks of partially paid leave to people who need to take time off work for those reasons allowed under the FMLA. The bill would create a "Family Leave Insurance Fund," paid for by small contributions from both employers and workers, to allow for pooled risk and lower costs. The payments would be issued through employers' regular payroll system, to make it simple to administer, with prompt reimbursement from the Family Leave Insurance Fund.

The public strongly supports paid family and medical leave. This fall, the National Partnership released national polling data that shows consistent support for paid family and medical leave. Respondents were asked whether they would support a plan in which workers and employers pay a dollar each a week for paid family and medical leave. 76% of the total sample were supportive. Hispanics and African Americans were even more strongly supportive—86% and 84% respectively. Neither gender nor age affected support for the proposal: 73% of men and 78% of women supported it as did, as noted above, a large majority of respondents of all ages.<sup>25</sup>

### **States Leading the Way**

Realizing the importance of paid family and medical leave, state programs are starting to provide it. Already, the six states with temporary disability programs (California, Hawaii, New Jersey, New York, Rhode Island and Puerto Rico) provide wage replacement for women during the period of disability due to pregnancy.

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<sup>22</sup> Families and Work Institute, *Highlights of the 2002 National Study of the Changing Workforce*, 2002.

<sup>23</sup> AARP Public Policy Institute, *Update on the Aged 55+ Worker*, 2005.

<sup>24</sup> Employment Policy Foundation. 2002. "Employee Turnover – A Critical Human Resource Benchmark." HR Benchmarks (December 3): 1-5 ([www.epf.org](http://www.epf.org), accessed January 3, 2005).

<sup>25</sup> Lake Research Partners, *Nationwide Polling on Paid Family and Medical Leave Poll*, conducted June 20-27, 2007.

## **California**

In 2004, California became the first state to provide wage replacement while a worker is on family leave.<sup>26</sup> The most comprehensive of its kind, the law has given more than 13 million California workers (nearly one-tenth our country's workforce) partial income replacement (roughly 55% of wages) while they care for a new child or seriously ill family member. Premiums for the program are paid entirely by workers and are incorporated into the state's temporary disability fund. Critically, the wage replacement program covers all California workers who pay into the system; it is not limited to those who are covered by the federal or state family medical leave act. Thus, the program reaches workers who may need it the most—those who are not covered because they work for small businesses or do not have a long tenure at their current job. Studies of workers using the wage replacement offered by the law show that 88% do so to care for a new baby and 12% do so to perform to take for another family member.<sup>27</sup>

## **Washington State**

In May of 2007, Washington State became the second state in the country to enact a paid parental leave program. Washington's program will provide \$250.00 per week for five weeks to new parents who are staying home with their child. Although not as expansive as California's, Washington's program also covers more workers than the FMLA and provides job-protected leave for employees who work in establishments with over 25 employees. Washington created a committee to explore funding options for the bill. In the short term, the committee has recommended using the general fund of the state.

## **Wage Replacement or Income Insurance Campaigns in Other States**

We are seeing more states engaging in efforts to provide the necessary income for workers to be able to take the leave they need. In the past year, New Jersey, New York, Illinois, and Oregon have all introduced family insurance legislation similar to California's program that would provide wages while workers are on family leave.

## **Where We Stand Internationally**

The United States stands alone among industrialized nations in its complete lack of a national program to ensure that workers are financially able to take leave when they have a new baby or need to care for an ill family member or recover from an illness. A Harvard/McGill study of 173 nations found that 169 guarantee paid leave to women in connection with childbirth, and 66 ensure that fathers can take paid paternity leave. The United States is the only industrialized country without paid family leave, and guarantees no paid leave at all for mothers. It is in the company of just three other nations: Liberia, Papua New Guinea, and Swaziland.<sup>28</sup>

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<sup>26</sup> California's temporary disability system already provided payment when a worker was unable to work because of the worker's own disability, including disability due to pregnancy.

<sup>27</sup> California Employment Development Department, Press Release, July 1, 2005 (available at <http://www.edd.ca.gov/newsrel05-36.pdf>).

<sup>28</sup> Jody Heymann, et al., *The Work, Family, and Equity Index: Where Does the United States Measure Up?*, 2007. Harvard School of Public Health, Project on Global Working Families, Boston, MA.

**Conclusion**

It is time – past time – we join the rest of the world and make sure our families do not have to risk their financial health when they do what all of us agree is the right thing—take care of a family member who needs them. Now is the time to put family values to work by protecting the FMLA from burdensome regulations that could make it harder for workers to utilize it, and by expanding it to cover more workers and help those who urgently need paid leave.